

**PARTIES** 

2. Plaintiff HUEY-CHIANG LIOU (A#075258497) is a lawful permanent resident of the United States. Plaintiff resides in Alameda County, within the jurisdiction of this court. Plaintiff filed the N-400 application for naturalization to the United States and passed examination for naturalization on or about March 12, 2003. Defendants have failed to make a decision on the application within 120 days after the examination.

- 3. Defendant Peter D. Keisler is the acting United States Attorney General and this action is brought against him in his official capacities. Pursuant to 8 U.S.C. § 1103(a), he is charged with controlling determination of all issues of law pertaining to immigration and with representing the United States of America in various legal matters before this Court.
- 4. Defendant Scott Schools is the United States Attorney for the California Northern District.
- 5. Defendant Emilio Gonzalez is the Director of the United States Citizenship and Immigration Services (USCIS), an agency within DHS to whom the Secretary's authority has in part been delegated and is subject to the Secretary's supervision. In his capacity as the Director of USCIS, Dr. Gonzalez is responsible for the lawful administration of immigration benefits and services including adjudication of naturalization applications. 8 C.F.R. § 100.2(a). As such, he has decision-making authority over the matters alleged in this petition.
- 6. Defendant Rosemary Melville, San Francisco District Director, is an official of the USCIS generally charged with supervisory authority over all operations of the USCIS within her District with certain specific exceptions not relevant here. 8 C.F.R. § 100.2(d)(2)(ii). As will be shown, Defendant Director is the official with whom Plaintiff's naturalization application remains pending.
- 7. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigations (FBI), the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of Homeland Security. As will be shown, Defendant has failed to complete the security clearances on Plaintiff's case.

#### **JURISDICTION**

8. Jurisdiction in this case is proper under 28 U.S.C. §§ 1331 and 1362, 5 USC § 701 *et seq.*, USC §2201 *et seq.*. Relief is requested pursuant to said statues.

## **VENUE**

9. Venue is proper in this Honorable Court, pursuant to 28 U.S.C. § 1331(e) and 8 U.S.C. § 1447(b), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where the Plaintiff now resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

## INTRADISTRICT ASSIGNMENT

10. This lawsuit should be assigned to the Oakland Division of this Honorable Court because a substantial part of the events of omissions which give rise to this lawsuit occurred in Alameda County. Specifically, Plaintiff's application for naturalization remains pending with the USCIS San Francisco District Office.

## **EXHAUSTION OF REMEDIES**

11. Plaintiff has exhausted his administrative remedies. Specifically, Plaintiff has submitted all the necessary documents that clearly establish his eligibility to be naturalized as U.S. Citizen. Plaintiff has on several occasions inquired about the status of his case in person at the USCIS San Francisco District Office. He was repeatedly told that the USCIS is still waiting for the background check result to come back from FBI.

## CAUSE OF ACTION

- 12. Plaintiff has been a lawful permanent resident of the United States since December 23,
- 22 | 1997. During the passed five years, he has continued to reside in this country. Having fulfilled
- 23 the residency prerequisites, Plaintiff filed a Form N-400 Application for Naturalization with the
- 24 California Service Center of the USCIS on or about July 10, 2002. (Exhibit 1).
- 25 | 13. Plaintiff was fingerprinted on August 23, 2002 at Oakland, California, District Office of the USCIS, his local office. (Exhibit 2)
  - 14. Plaintiff's examination with USCIS regarding his N-400 application was scheduled for about March 12, 2003 at Oakland, California, District Office.

PLAINTIFF'S ORIGINAL COMPLAINT

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- PLAINTIFF'S ORIGINAL COMPLAINT

- 15. Plaintiff thereafter received a notice stating the date and location for his examination appointment on or about March 12, 2003, at Oakland, California, District Office.
- 16. Plaintiff appeared for examination on or about March 12, 2003 and successfully passed all the required tests for citizenship. At the end on the examination he was informed that a decision on his case cannot be made awaiting completion of pending security checks by FBI. To date, more than 120 days have lapsed and Plaintiff's application remains unadjudicated.
- 17. In 2006, Plaintiff moved to a new address in Fremont, CA. He subsequently filed AR-11 Change of Address form with the USCIS indicating his new address.
- 18. Between February 2004 and September 2007, Plaintiff made several inquiries with the USCIS San Francisco District Office about the status of his case. In each visit the answer was that application cannot be acted upon due to the pending security checks. (Exhibit 3) On one occasion, Plaintiff was told that his fingerprint might be expiring soon and, therefore, on July 14, 2004, Plaintiff went for a second fingerprint in the San Francisco, California District Office. (Exhibit 4)
- 19. Plaintiff contacted the USCIS National Customer Service Center which initiated an inquiry to the USCIS San Francisco District Office on his behalf. The mailed responses indicated that Plaintiff's case "is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed" and "Cases like this one are check weekly for clearance and then worked. Since a third party issues the clearance it is difficult to give you an accurate time frame".
- Plaintiff's application for naturalization has now remained unadjudicated for more than 25. four years since his interview, thereby depriving Plaintiff of the right to a decision on his application and the peace of mind to which Plaintiff is entitled.
- Defendants have sufficient information to determine Plaintiff's eligibility pursuant to 26. applicable requirements.
- Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. § 701 et seq., have failed to make a determination on Plaintiff's naturalization application within the 120-day

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period after the date of examination.

Case 3:07-cv-05042-EDL

- 28. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties under the law.
  - (a) Plaintiff has been deprived of the substantial and unique benefits of citizenship. including protection of the laws of the United States equal to that of citizens, political rights including the right to vote, the right to obtain a United States passport, the protection of the United States government when outside of the United States.
  - (b) Plaintiff has experienced tension in his life due to the uncertainty and anxiety stemming form the pendency of Plaintiff's application, including the inability to file visa petitions for immediate relatives as a United States citizen.

## **PRAYER**

- 29. WHEREFORE, in view of the argument and the authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:
  - (a) adjudicating the naturalization application and, if the Court finds Plaintiff eligible for naturalization, to administer the Oath of Allegiance.
  - in the alternative, the Court may remand requiring Defendants to immediately (b) adjudicate Plaintiff's naturalization application.
  - (c) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.
  - granting such other relief at law and in equity as justice may require. (d)

Dated:  $\int_{-1}^{\infty} -18 - c7$ 

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Attorney for Plaintiff

## **VERIFICATION**

I, HUEY-CHIANG LIOU, plaintiff in the above-captioned case, have read the foregoing complaint and verify that all facts stated therein are true and correct to my knowledge.

Dated: 9/18/2005

**HUEY-CHIANG LIOU** 

PLAINTIFF'S ORIGINAL COMPLAINT

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EXHIBIT \_\_/



NOTICE DATE July 16, 2002 Receipt CASE TYPE INS A# N400 A 075 258 497 Application For Naturalization RECEIVED DATE PRIORITY DATE APPLICATION NUMBER PAGE WSC\*000848262 July 10, 2002 July 10, 2002 1 of 1

APPLICANT NAME AND MAILING ADDRESS

HUEY CHIANG LIOU

763 ALSION COURT

FREMONT CA 94539

PAYMENT INFORMATION:

Single Application Fee:

\$310.00

Total Amount Received: Total Balance Due:

\$310.00 \$0.00

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The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth:

July 29, 1965

Address Where You Live: 763 ALSION COURT

FREMONT CA 94539

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607INS Customer Service Number: (949) 831-8427

300 375-5283 APPLICANT COPY

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WSC\$000943582 WSCG000037202 Case 3:07-cv-05042-EDL Document 1 Filed 10/01/2007 Page 9 of 19

# **ASC/COLO Standard Operating Procedures**

## **DBI TENPRINTER Applicant Information Worksheet (AIW)**

When you have completed this worksheet, turn it into the receptionist. Have this worksheet, your

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Asian	or Pacific Isla	and		Unknown			
HEIGHT: _	Feet _	Inches			WI	EIGHT:	_Pounds
EYE COLO	R: Check the	most approp	oriate code bel	low:	,		
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HAIR COL	OR: Check th	ne most appro	opriate code b	elow:			
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LIST ANY	OTHER NA	MES YOU	HAVE USED	):			
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Attachment 3-A Change 1 04/23/01 Case 3:07-cv-05042-EDL Document 1 Filed 10/01/2007 Page 11 of 19

EXHIBIT \_ 3\_\_\_



## U.S. Department of Justice Immigration and Naturalization Service

SAN FRANCISCO DISTRICT OFFICE 444 WASHINGTON ST SAN FRANCISCO, CA 94111

## **STATUS INQUIRY**

HUEY-CHIANG LIOU 763 ALSION CT FREMONT, CA 94539

Dear HUEY-CHIANG LIOU,

On 02/07/2004 you, or your designated representative, contacted the Citizenship and Immigration Services National Customer Service Center to request the status of your application.

The information provided to the Customer Service Representative is as follows:

Acknowledgment Letter Date:

Application Type: N-400

Filing Date: 07/10/2002

Date of Birth: 07/29/1965

File Number: 075258497

Receipt Number: WSC\*000848262

Alien Registration Number: 075258497

Social Security:

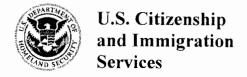
Country of Origin: TAIWAN

Phone: (510)657-6803

Thank you for contacting CIS National Customer Service Center.

The status of your claim is:

Unfortunately your case is still pending a background clearance. Cases like this one are check weekly for clearance and then worked. Since a third party issues the clearance it is difficult to give you an accurate time frame.



LIOU, HUEY-CHIANG 763 ALSION COURT FREMONT, CA 94539 File No. A75258497

App Id:

Date: 07-15-2004

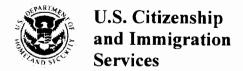
Officer:

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows t hat your Form N -400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pendi ng for security checks are regularly reviewed for any new cases that have cleared. We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Thank you for your cooperation and patience.

U.S. Citizenship and Immigration Services 1301 Clay Street Rm#380N Oakland, CA 94612



HUEY-CHIANG LIOU 763 ALISON COURT FREMONT CA 94539

File No. A75 258 497 App Id: WSC\*848262

Date: July 30, 2004

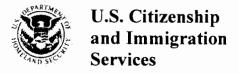
Officer: OKL/CB/KJ

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows that your Form N-400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pending for security checks are regularly reviewed for any new cases that have cleared. We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Thank you for your cooperation and patience.

U.S. Citizenship and Immigration Services 1301 Clay Street, Room 380N Oakland, California 94612-5217



HUEY-CHIANG LIOU 763 ALSION COURT FREMONT CA 94539

File No. A75 258 497

App Id: WSC\*848262 Date: August 3, 2004

Officer: OKL/CB/KJ

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows that your Form N-400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pending for security checks are regularly reviewed for any new cases that have cleared. We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Thank you for your cooperation and patience.

U.S. Citizenship and Immigration Services 1301 Clay Street, Room 380N Oakland, California 94612-5217

U.S. Department of Homeland Security

USCIS 630 Sansome Street San Francisco,CA 94111



Wednesday, September 12, 2007

HUEY CHANG LIOU 304 ANZA STREET FREMONT CA 94539

Dear Huey Chang Liou:

On 09/04/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:

Applicant or Petitioner

Attorney Name:

Information not available

Case type:

N400

Filing date:

07/10/2002

Receipt #:

WSC\*000848262

Beneficiary (if you filed for someone else):

Information not available

Your USCIS Account Number (A-number):

A075258497

Type of service requested:

Outside Normal Processing Times

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

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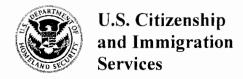
EXHIBIT \_ 4\_\_\_

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## DBI TENPRINTER Applicant Information Worksheet (AIW)

When you have completed this worksheet, turn it into the receptionist. Have this worksheet, your appointment notification letter and picture identification available.

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Asian or Pacific Island		Unknown		
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HAIR COLOR: Check the most a	appropriate code bel	ow:	,	
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LIOU, HUEY-CHIANG 763 ALSION COURT FREMONT, CA 94539

CC:

File No.A75258497

App Id:

Date: 07-15-2004

Officer:

The fingerprints that you sub	omitted have expired.	To continue processing	your application,	you must go to a CIS

The fingerprints that you submitted have expired. To continue processing your application, you must go to a CIS Application Support Center to have your fingerprints taken. Please ignore this letter if you have appeared for fingerprints within the last 90 days, or if you receive a duplicate notice and your fingerprints were not unclassifiable.

If you do not have them taken within an 87-day period, your naturalization application may be considered abandoned and denied pursuant to 8 CFR § 103.2(b)(13). Please present yourself with this letter to one of the sites below for Re- fingerprinting: If you miss or cannot appear on the appointment date(s), you must notify the appropriate Application Support Center by mail with a written request to be rescheduled. You must include a copy of this Notice.

	SAN FRANCISCO		OAKLAND
	250 Broadway (At Sansome St)		2040 Telegraph Avenue
	HOURS:		HOURS:
	Tuesday through Saturday, 8am to 3:30 pm		Tuesday through Saturday, 8am to 3:30 pm
	SANTA ROSA		SAN JOSE
	1401 Guerneville Rd, Suite 100		122 Charcot Avenue
	HOURS:		HOURS:
	Tuesday through Saturday, 8am to 3:30 pm		Tuesday through Saturday, 8am to 3:30 pm
	ruesday through Saturday, earn to 3.30 pm		ruesury through Saturday, eath to 3.50 pm
	MODESTO		SALINAS
_	901 N Carpenter Ave #14		1954 N Main Street
	Crossroads Shopping Center		HOURS:
	HOURS:		Tuesday through Saturday, 9am to 3:30 pm
	Tuesday through Saturday, 9am to 3:30 pm		γ····
	SACRAMENTO		FRESNO
	731 K Street, Room 100	_	4893 E. Kings Canyon
	HOURS:		HOURS:
	Tuesday through Saturday, 8am to 3:30 pm		Tuesday through Saturday, 8am to 3:30 pm
	ruesday through Saturday, oann to 3.30 pm		acoust inrough saturally, out to 3.50 pm
	RED BLUFF (Tehama County Sheriff's Office)		ARCATA (Arcata Police Department)
_	502 Oak Street		736 "F" Street
	HOURS:		HOURS:
	Tuesday through Thursday, 9am to 1:00 pm		Please call (707) 822-2428 to schedule appointment
	2pm to 4:00 pm		
	2pm to 1100 pm		

Photo Identification. Naturalization applicants should bring their Alien Registration Card. All applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

Please take note that the Application Support Center staff will not be able to answer any questions about the status of your application.